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FILED
08/07/2023
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Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0877-R-2023
Lambert, Kathryn
5.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Robert D. Hughes; Sarah G. Hughes

CASE 43B-0877-R-2023
43B 196997-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Robert D. Hughes and Sarah G. Hughes fish and wildlife claim 43B 196997-00 appeared in the Preliminary Decree with the following remarks:

NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.

THE MOTION OF THE COURT HAS BEEN AMENDED TO CONFORM WITH THE EVIDENCE SUBMITTED BY THE CLAIMANT TO INCLUDE CHANGES IN THE PURPOSE AND MEANS OF DIVERSION. BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE TEMPORARY PRELIMINARY DECREE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY

AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

A GUIDELINE FOR THE FLOW RATE AND VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND FLOW RATE AND VOLUME REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE AND VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE AND VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

NO VOLUME HAS BEEN CLAIMED.

The flow rate and volume issue remarks were not addressed through the objection process.

The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence. The February 17, 2023 Order Consolidating Case And Setting Deadlines Pursuant to Section 85-2-248(5), MCA set various deadlines for the claimants and the Bozeman Regional Office, Montana Department of Natural Resources and Conservation ["DNRC"]. On June 5, 2023 the DNRC Memorandum was filed including the Sworn Statement Of Robert Hughes provided to the DNRC by claimants' counsel. The DNRC Memorandum also notes there may be an additional owner of this claimed right. The June 20, 2023 Order Updating Caption and Order Setting Filing Deadline set a July 20, 2023 deadline for this possible owner to file an ownership update with the DNRC. On July 27, 2023 the DNRC database - the state's centralized record system – shows no ownership update was filed. These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect

including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Preliminary Decree does not include a flow rate. The flow rate should be 10.00 GPM. The flow rate issue remark should be removed as addressed and resolved.
2. The Preliminary Decree does not include a volume. The volume should be 2.99 AC-FT. The volume issue remark should be removed as addressed and resolved.
3. The other remarks provide notice of possible issues which could be pursued by filing an objection. No objections were filed. These two remarks should be removed as having served their notice purposes.

CONCLUSION OF LAW

The information provided by the claimants and the DNRC is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service Via Electronic Mail:

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 196997-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ROBERT D HUGHES
PO BOX 974
LIVINGSTON, MT 59047 0974

SARAH G HUGHES
PO BOX 974
LIVINGSTON, MT 59047 0974

Priority Date: DECEMBER 31, 1951
Type of Historical Right: USE
***Purpose (use):** FISH AND WILDLIFE
Flow Rate: 10.00 GPM
Volume: 2.99 AC-FT
THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

***Source Name:** DUCK CREEK
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENW	25	1S	10E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DRAIN DITCH
Subdivision: COUNTRY ACRES
Period of Use: JANUARY 1 TO DECEMBER 31
Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENW	25	1S	10E	PARK

Subdivision: COUNTRY ACRES